

AMENDED IN ASSEMBLY APRIL 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1470

Introduced by Assembly Member Alejo
(Coauthors: Assembly Members Brown, Daly, and Dodd)

February 27, 2015

An act to add Section 510.5 to the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1470, as amended, Alejo. Working hours: overtime.

Existing law, with certain exceptions, establishes 8 hours as a day's work and a 40-hour workweek, and requires payment of prescribed overtime compensation for additional hours worked. Existing law establishes the Division of Labor Standards Enforcement in the Department of Industrial Relations for the enforcement of labor laws, including overtime payment. Under existing law, a person who violates the provisions regulating work hours is guilty of a misdemeanor.

This bill would *establish a rebuttable presumption that an employee is exempt from overtime pay* ~~an employee with a~~ *if the employee earns total gross annual compensation of at least \$100,000* ~~if that employee also~~ *and regularly performs any of the exempt duties or responsibilities of an executive, administrative, or professional employee as set forth in the Industrial Welfare Commission Wage Orders. This bill, to rebut the presumption, would require evidence that the employee did not earn total gross annual compensation of at least \$100,000, that the employee did not earn at least \$1,000 per week, as specified, or that the employee did not regularly perform at least one exempt duty of an executive, administrative, or professional employee.* This bill would only apply

to an employee whose primary duty includes office or nonmanual work, as described. ~~By expanding the scope of an existing crime, this bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~yes~~ *no*.

The people of the State of California do enact as follows:

1 SECTION 1. Section 510.5 is added to the Labor Code, to
2 read:

3 510.5. (a) ~~An~~ *There shall be a rebuttable presumption that*
4 *an employee is exempt from Section 510 if the employee with* ~~with~~ *earns*
5 *total gross annual compensation of at least one hundred thousand*
6 *dollars (\$100,000) is exempt from Section 510, if the employee*
7 *and also customarily and regularly performs any one or more of*
8 *the exempt duties or responsibilities of an executive, administrative,*
9 *or professional employee as set forth in the Industrial Welfare*
10 *Commission Wage Orders.*

11 (b) (1) “Total gross annual compensation” shall include at least
12 one thousand dollars (\$1,000) per week paid on a salary or fee
13 basis. Total gross annual compensation may also include
14 commissions, nondiscretionary bonuses, and other nondiscretionary
15 compensation earned during a 52-week period. Total gross annual
16 compensation does not include board, lodging, and other facilities,
17 and does not include payments for medical insurance, payments
18 for life insurance, contributions to retirement plans, and the cost
19 of other fringe benefits.

20 (2) If an employee’s total gross annual compensation does not
21 meet the minimum amount established in subdivision (a) by the
22 last pay period of the 52-week period, the employer may, during
23 the last pay period or within one month after the end of the 52-week
24 period, make one final payment sufficient to achieve the required
25 total. If an employer fails to make that payment, this section shall
26 not apply.

1 (3) An employee who does not work a full year for the employer,
2 either because the employee is newly hired after the beginning of
3 the year or ends the employment before the end of the year, is
4 exempt from Section 510 pursuant to this section if the employee
5 receives a pro rata portion of the minimum amount established in
6 subdivision (a), based upon the number of weeks that the employee
7 will be or has been employed. An employer may make one final
8 payment as described in paragraph (2) within one month after the
9 end of employment, or this section shall not apply.

10 (4) The employer may utilize any 52-week period as the year,
11 such as a calendar year, a fiscal year, or an anniversary of hire
12 year. If the employer does not identify some other year period in
13 advance, the calendar year will apply.

14 ~~(e) If an employee has a total gross annual compensation of at~~
15 ~~least one hundred thousand dollars (\$100,000), there will be a~~
16 ~~rebuttable presumption that the employee is exempt from the~~
17 ~~provisions of Section 510.~~

18 *(c) The presumption created under subdivision (a) shall be*
19 *rebutted only by evidence of one or more of the following:*

20 *(1) The employee did not earn total gross annual compensation*
21 *of at least one hundred thousand dollars (\$100,000).*

22 *(2) The employee did not earn at least one thousand dollars*
23 *(\$1,000) per week paid on a salary or fee basis.*

24 *(3) The employee did not customarily and regularly perform at*
25 *least one exempt duty or responsibility of an executive,*
26 *administrative, or professional employee as set forth in the*
27 *Industrial Welfare Commission Wage Orders.*

28 (d) This section applies only to employees whose primary duty
29 includes performing office or nonmanual work.

30 (e) (1) This section does not apply to nonmanagement
31 production-line workers and nonmanagement employees in
32 maintenance, construction, and similar occupations, such as
33 carpenters, electricians, mechanics, plumbers, iron workers,
34 craftsmen, operating engineers, longshoremen, construction
35 workers, laborers, and other employees who perform work
36 involving repetitive operations with their hands, physical skill, and
37 energy, regardless of the amount of their compensation.

38 (2) This section does not apply to an employee covered under
39 a valid collective bargaining agreement that expressly provides
40 for the wages, hours of work, and working conditions of

1 employees, including premium wage rates for all overtime hours
2 worked.

3 ~~SEC. 2. No reimbursement is required by this act pursuant to~~
4 ~~Section 6 of Article XIII B of the California Constitution because~~
5 ~~the only costs that may be incurred by a local agency or school~~
6 ~~district will be incurred because this act creates a new crime or~~
7 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
8 ~~for a crime or infraction, within the meaning of Section 17556 of~~
9 ~~the Government Code, or changes the definition of a crime within~~
10 ~~the meaning of Section 6 of Article XIII B of the California~~
11 ~~Constitution.~~